

**ST 01-24**

**Tax Type: Sales Tax**

**Issue: Reasonable Cause on Application of Penalties**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

**DEPARTMENT OF REVENUE  
STATE OF ILLINOIS**

v.

**ABC LTD.**

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) Mimi Brin  
) Administrative Law Judge

**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Shepard Smith, Special Assistant Attorney General, for the Illinois Department of Revenue

**Synopsis:**

This matter came on for hearing pursuant to ABC Ltd.'s ("Taxpayer" or "ABC") protest of Notices of Assessments 00 00000000000000, 00 00000000000000 and 00 00000000000000 (collectively "NOA"), issued by the Illinois Department of Revenue ("Department") for late payment penalties for December 1999, February 2000 and March 2000, respectively. The penalties were assessed as a result of taxpayer discontinuing its filing of Retailers' Occupation Tax returns on a quarter monthly basis following its sale of a substantial portion of its assets, that resulted in a reduction of its monthly liability below \$10,000. At issue are whether the statutory penalties are applicable and, if they are, whether there is reasonable cause to abate them. Mr. John Doe, taxpayer's president,

appeared and testified on taxpayer's behalf. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department. In support of this recommendation, I make the following findings of fact and conclusions of law:

**Findings of Fact:**

1. The Department issued to ABC Notices of Assessment 00 00000000000000 for \$44.00 in remaining tax due and for \$197.00 as a late payment penalty for December, 1999; 00 00000000000000 for \$220.00 as a late payment penalty for February 2000; and, 00 00000000000000 for \$258.00 as a late payment penalty for March 2000. Department Gr. Ex. No. 1
2. The Department concedes that it no longer seeks the \$44.00 in remaining tax due as assessed for December 1999. Tr. p. 4
3. By correspondence dated June 10, 1996, taxpayer was advised by the Department that taxpayer was statutorily required to file and remit sales and use taxes quarter monthly, beginning in July, 1996. Department Ex. No. 2 Taxpayer was also advised, by that same correspondence, that it was to continue making quarter monthly payments until notified by the Department that such payments were no longer required. Id.
4. As required by statute 35 ILCS 5/902(d),<sup>1</sup> ABC notified the Department by correspondence dated June 7, 1999, that it had "entered into a contract to sell the majority of its business assets" and that it would close on the contract on or about June 21, 1999. Taxpayer Ex. No. 1

5. In response to that notification, the Department issued, on June 15, 1999, a Bulk Sale Stop Order to the intended purchaser of these assets, requiring that an amount certain be withheld from the proceeds in order to satisfy any outstanding Illinois tax liabilities. Taxpayer Ex. No. 2
6. By correspondence dated March 6, 2000, the taxpayer was advised by the Department that since its “average monthly tax liability for the preceding four complete calendar quarters was less than \$10,000” it was no longer required to file and make quarter monthly filings, but, rather, could return to monthly filings and payments, effective the second calendar quarter 2000. Department Ex. No. 2

**Conclusions of Law:**

For the months at issue, December 1999, February 2000 and March 2000, taxpayer filed and paid its Illinois sales and use taxes on a monthly basis, as its monthly liabilities for these tax periods were less than \$10,000. The late payment penalties assessed herein are based upon the uncontested facts that taxpayer was advised that beginning in July 1996, it was statutorily required to file and pay these tax liabilities quarter monthly, as its prior monthly liabilities were \$10,000 or more, and that it was to continue to do so until further advised by the Department. On its own accord, taxpayer discontinued filing and making quarter monthly payments, and paid its liabilities monthly for the months at issue. The Department’s notification to ABC to return to monthly payments was not made until March, 2000, and it became effective for the second calendar quarter 2000. Department Ex. No. 2.

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<sup>1</sup> This provision concerns the necessary notification to the Department of a sale outside the usual course of a taxpayer’s business i.e. a majority of its business assets, so that the Department will receive any tax owed

ABC argues that since its monthly tax liabilities following the sale of the majority of its assets were less than \$10,000, it was no longer required to make quarter monthly payments. Further, it avers that the Department was on notice of this sale, and therefore, its March 2000 communication to discontinue quarter monthly filings was untimely.

The applicable statutory provision is found in section 3 of the Retailers' Occupation Tax Act (35 ILCS 120/3) and it reads, in pertinent part, as follows:

If the taxpayer's average monthly tax liability to the Department under this Act, the Use Tax Act, the Service Occupation Tax Act, and the Service Use Tax Act, excluding any liability for prepaid sales tax to be remitted in accordance with Section 2d of this Act, was \$10,000 or more during the preceding 4 complete calendar quarters, he shall file a return with the Department each month by the 20<sup>th</sup> day of the month next following the month during which such tax liability is incurred and shall make payments to the Department on or before the 7<sup>th</sup>, 15<sup>th</sup>, 22<sup>nd</sup> and the last day of the month during which such liability is incurred....Once applicable, the requirement of the making of quarter monthly payments to the Department by taxpayers having an average monthly tax liability of \$10,000 or more as determined in the manner provided above shall continue until such taxpayer's average monthly liability to the Department during the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability) is less than \$9,000, or until such taxpayer's average monthly liability to the Department as computed for each calendar quarter of the 4 preceding complete calendar quarter period is less than \$10,000. However, if a taxpayer can show the Department that a substantial change in the taxpayer's business has occurred which causes the taxpayer to anticipate that his average monthly tax liability for the reasonably foreseeable future will fall below \$10,000, then such taxpayer may petition the Department for a change in such taxpayer's reporting status. The Department shall change such taxpayer's reporting status unless it finds that such change is seasonal in nature and likely to be long term.

By the terms of the statute, taxpayer was entitled to discontinue paying its tax liabilities quarter monthly: 1) when its liabilities for 4 complete calendar quarters fell

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to it out of the proceeds of a sale before an owing taxpayer removes itself from the business.

below a certain dollar threshold, or 2) upon its petition to the Department to change its reporting status, showing that there has been a substantial change in taxpayer's business and that, as a result, taxpayer anticipates that its average monthly tax liability for the reasonably foreseeable future will be less than the threshold dollar amount. Neither of these occurred in this matter.

First, assuming that the sale of the assets was concluded in late June, 1999, the next four complete calendar quarters, during which taxpayer's monthly tax liabilities were below the dollar threshold, ended at the end of June, 2000. The Department notified taxpayer in March, 2000, that beginning with the second quarter 2000, it could return to monthly reporting. The taxpayer, however, had, unilaterally, already begun monthly reporting, at least as early as December, 1999.

Alternatively, pursuant to statute, taxpayer could have returned to monthly filing and payment if it advised the Department of a change in its business circumstances such that it could anticipate that its monthly liabilities for the reasonably foreseeable future would be under \$10,000. Taxpayer failed to do this.

Taxpayer argues, and the evidence shows, that it did advise the Department that it was selling the majority of its business assets by the end of June, 1999, and the Department responded by issuing a Bulk Sale Stop Order. However, there was no indication in taxpayer's correspondence that it anticipated that its monthly tax liabilities after the sale would be such as to be below the statutory threshold for quarter monthly filers. This is of particular import since the taxpayer continued to do business under its corporate name using its same business registration number. Tr. p. 23 Therefore, the Department was on notice only that the majority of business assets would be sold, and not

that the reduction in taxpayer's tax liabilities would be such as to mandate a return to monthly filing. It is certainly not beyond the realm of possibilities that an entity's business assets can be reduced, but the volume of business remaining is such that its ROT liabilities remains over the threshold amount.

The statute is explicit. Although taxpayer may have assumed that information regarding its subsequent monthly tax liabilities was implied in its communication, it was not. Nor is that a reasonable assumption given the volume of businesses and transactions for which the Department is responsible.

Wherefore, for the reasons stated above, it is recommended that Notice of Assessment 00 00000000000000 be revised to reflect no additional tax remaining due, and that it be finalized as so revised, and further that Notices of Assessment 00000000000000 and 00000000000000 be finalized as issued.

10/2/01

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Mimi Brin  
Administrative Law Judge